

ORIGINAL

cc:  
DAE

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Attorney for Defendant  
ANDY S.S. YIP

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

SEP 21 2007  
KSK  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. CR02-00225 (1) DAE
	)	
Plaintiff,	)	NOTICE OF MOTION; MOTION FOR
	)	JUDGMENT NOTWITHSTANDING
vs.	)	VERDICT AS TO COUNT 1;
	)	MEMORANDUM OF LAW;
ANDY S.S. YIP, (01)	)	EXHIBITS 1-3; DECLARATION OF
BRENDA M.O. CHUNG (02)	)	COUNSEL
	)	
Defendants.	)	
	)	
<hr/>		DATE: _____
		TIME: _____
		JUDGE: DAVID A. EZRA

TRIAL DATE: 08/15/07

NOTICE OF MOTION

TO:

LESLIE E. OSBORNE, ESQ.  
Asst. U.S. Attorney  
6-100 PJKK Federal Building  
300 Ala Moana Boulevard  
Honolulu, Hawaii 96850

Attorney for Plaintiff  
UNITED STATES OF AMERICA

HOWARD K.K. LUKE, ESQ.  
841 Bishop Street #2022  
Honolulu, Hawaii 96813

Attorney for Defendant  
BRENDA M.O. CHUNG

NOTICE IS HEREBY GIVEN that Defendant Andy S.S. Yip's Motion for Judgment Notwithstanding Verdict as to Count 1 shall come on for hearing before the Honorable David A. Ezra, Judge of the above-entitled Court, in his courtroom in the United State Courthouse, 300 Ala Moana Boulevard, Honolulu, Hawaii, on \_\_\_\_\_, \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock \_\_\_\_\_m., or as soon thereafter as counsel may be heard.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. CR02-00225 (1) DAE
	)	
Plaintiff,	)	MOTION FOR JUDGMENT
	)	NOTWITHSTANDING VERDICT AS TO
vs.	)	COUNT 1
	)	
ANDY S.S. YIP,	(01) )	
BRENDA M.O. CHUNG	(02) )	
	)	
Defendants.	)	
	)	

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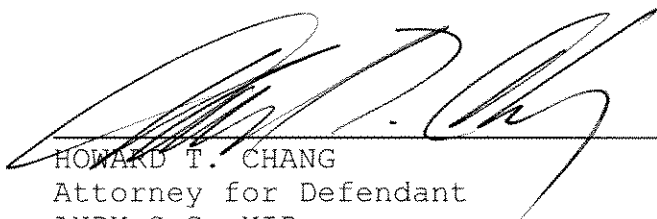
MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT AS TO COUNT 1

Defendant Andy S.S. Yip, by and through his undersigned attorney, hereby moves this Honorable Court for an order setting aside the jury's verdict of guilty as to Count 1 of the Second Superseding Indictment, i.e. conspiracy to defraud the Internal Revenue Service, in violation of 18 U.S.C. 371.

The reason for granting this Motion is that Co-Defendant Brenda Chung, who was the only other person than Defendant Yip charged in Count 1, was acquitted by the jury after the completion of a joint trial involving Ms. Chung and Mr. Yip. Under the Rule of Consistency embodied by **Hartzel v. United States**, 322 U.S. 680, 682n.3 (1944) and **Lubin v. v. United States**, 313 F.2d 419, 423 (9<sup>th</sup> Cir. 1963) and their progeny, the dismissal of Count 1 against the sole remaining co-conspirator Andy Yip in this case is required. This Motion is brought pursuant to Rules

29(c) and 47 of the Federal Rules of Criminal Procedure and is based upon the two inconsistent verdicts issued in this case and the attached Memorandum of Law.

DATED: Honolulu, Hawaii, September 21, 2007.



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HOWARD T. CHANG  
Attorney for Defendant  
ANDY S.S. YIP